IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.399/2003

Reserved on.3.5.2007

Decided on. June 22, 2007

Ramesh Chand Rana. **…Petitioner.**

Versus

Union of India and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]. yes.

For the petitioner : **Mr. P.P. Chauhan, Advocate.**

For the respondents **Mr. Sandeep Sharma, Asstt. Solicitor General of India**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in the Indian Army on 13.11.1973 and was allotted Army No. 13735632. He received injuries while serving in 14 J&K Rifles in 1985 while discharging his official duties. His disability was assessed at 30%. He was denied the disability pension and AGI benefits vide communication dated 16th August, 1999 on the ground that he sought his discharge from service on compassionate grounds. He made a representation on 12th November, 2001 to the Defence Minister of India, which was turned down on 23rd May, 2002 by referring to Army Rule 13(3) Item 3 (iv).

The case set out by the respondents is that petitioner had submitted application for discharge from service on compassionate

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

grounds on 3rd April, 1989 and on the basis of the recommendations made by his Commanding Officer, he was discharged on compassionate grounds on 12th April, 1989 under Army Rule 13 (3) Item 3 (iv). The respondents have placed on record the copy of the request made by the petitioner on 3rd April, 1989. One thing is very evident from the application that the petitioner was not in a position to perform the duties, which he used to do efficiently. This was due to the injuries suffered by the petitioner in the year 1985 resulting in 30% disability.

Mr. P.P. Chauhan, Advocate appearing on behalf of the petitioner had strenuously argued that as per request made by the petitioner, he should have been placed in Rule 13 (3) II (ii) and thus was entitled the to disability pension.

Mr. Sandeep Sharma, Assistant Solicitor General of India had supported the decision of the respondents on the basis of which he was not held entitled to disability pension as conveyed to him on 16th August, 1999 and reiterated in communication dated 23rd March, 2002.

I have heard the parties and perused the record.

The petitioner was enrolled in the Army on 13th November, 1973 and suffered fatal injury in the year 1985 as his disability was assessed at 30%. The petitioner at that time had put in 16 years of service, though he was entitled to pension after putting in 15 years of service as per the Army Pension Regulations. He has been permitted to continue by the respondents and it was due to the injury that he was compelled to make a request on 3rd April, 1989 seeking his discharge from the Army. He had categorically mentioned in his representation that he was not in a position to discharge his duties efficiently which he used to do previously. The sole reason according to this Court for submission of the request was that due to the injuries which he had received in the year 1985 the petitioner

was not in a position to discharge his duties efficiently. Thus even though the petitioner had made a request for discharge, the same could not be considered as voluntary retirement as the same was based on medical grounds. The case of the petitioner would fall in Rule 13 (3) II (ii) and on that basis he is entitled to get disability pension. The question under what circumstances an individual has to be placed either under 13(3) II (b) or (ii) has been considered by a Division Bench of the Delhi High Court in **Ex Subedar Baljor Singh vs.Union of India and others**, 1997 LAB I.C.1818. The Division Bench after taking into consideration the facts of the case had opined as under :

> **"It is not disputed that had the sheltered appointment not been provided to the petitioner, he in terms of letter dated 20.8.1982 would have been discharged by 10.1.1994, namely, within a period of six months from the date of his being placed in low medical category(permanent). As the petitioner was retained in service in public interest, in terms of Government of India letter dated 10.5.1977, he was to be retained so long the sheltered appointment was available. He could have declined the sheltered appointment, when offered to him. It was not done. The petitioner did not express his unwillingness to serve and thus continued to serve but had ultimately to pray for being discharged. It was done by moving an application, which reads:-**
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> > **"I have the honour to stated that I am handicapped (Rt. Leg below knee JCO. My right leg was amputated at Base Hospital, Lucknow on 08 Feb.,93 and till today I am not feeling comfortable due to pain at my right leg. It is an obstacle to discharge my duties.**
> > **Therefore I request you please grant me premature retirement."**
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> **Having once acquired the eligibility for being granted the disability pension and disability benefits at a stage when the petitioner was placed in low medical category (permanent), he could not have been denied the benefit of the same in case he sought and was allowed discharge later on due to the same ailment due to which he was placed in low medical category.**

Army Order 146/77 to suggest that category 'C' JCO embraces all personnel, who are not fit for active service with units/formation Head Quarter involved in actual fighting but are fit for such duties which do not involve severe strain. On the day when the above request was made, the petitioner had made a request for exemption to perform night duty because of his medical condition. The application dated 30.3.1994, in which he sought exemption stated that being handicapped, the doctors had placed him in low medical category and that the artificial limb cannot be worn by him for more than an hour, as such he was having constant pain in amputated right leg. When this request was not acceded to, which could have been allowed had instructions contained in Army Order 146/77 been correctly followed. Faced with this situation, the petitioner was left with no other option except to move an application for discharge on medical ground, which was also recommended on medical grounds by the Commanding Officer in the following words:-

> **"JC-13449K. Sub (Trir) Baljor Singh of this unit met with an MT accident on 02 FEB 93 and was hospitalized. The Rt. Leg (below knee) of the JCO was amputated at Base Hosp.,Lucknow on 08 Feb. 93. The JCO was given an Artificial Limb and was placed in low med cat CEE (Permt) w.e.f.10th Feb. 93. There is no specific restriction advised on the employability by the med. Auth. except those specified under AO 146/77.**
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> **2. The JCO has put <u>an application for premature retirement from service on med. grounds</u>. The JCO is due for normal retirement in Mar.2003.**
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> **3. I have personally known the actual facts of the case of the JCO as he is not feeling comfortable due to recurring pain at his right leg.**
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> **4. Under these circumstances, having fully weighed the pros and cons of the case, the premature disch of this JCO from service is strongly recommended.**
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> Station: C/o 56 APO Sd/-
> Dated 19 Apr.94 (J.S.Brar)
> Lt.Col.
> Commanding Officer"

It was on the aforementioned recommendation that the petitioner was discharged. The discharge of the petitioner,

may be on his own request, in the circumstances aforementioned above has to be treated as a discharge due to medical grounds, during the extended period of retention. It was not due to any other reason, but was due to medical grounds. Had it been on any other ground other than medical grounds, the petitioner would not be entitled to any relief. It was because of low medical category (permanent) that the petitioner was unable to discharge the duties during the extended period of service due to the duties, performance of which involved stress and strain not commensurate with the medical category of the petitioner. When discharge was sought on medical grounds, and it was recommended also on medical grounds, such discharge has to be treated as a discharge on medical grounds. May be that for that purpose the petitioner submitted his request, which was duly recommended by the Commanding Officer that it was because of the medical condition of the petitioner as a direct result in the injuries sustained by him."

The plea of delay and laches raised by Mr. Sandeep Sharma, appearing on behalf of respondents is untenable. Law laid down by this Court in ***Birbal v. Union of India*** (H.P.) (DB) 2006 (3) S.C.T. 319 on the delay and laches is as under:

"Faced with this situation, learned counsel appearing for the respondent, contended that appeal of the petitioner against the order rejecting his case for disability pension was dismissed and communicated vide letter dated 20.12.1989, whereas writ petition has been filed on 29.8.2004 after a lapse of 15 years and as such, the same deserved to be dismissed on the ground of delay and laches. It is true that petitioner has filed writ petition after a lapse of 15 years. However, the record shows that the petitioner had been regularly representing to the authorities and his claim was declined only

on the ground that the disability was not attributable to military service. We having found that the disability was attributable to the military service, there is no alternative but to quash the orders rejecting the case of the petitioner for disability pension. Moreover, delay in approaching the Court, by itself is not enough to defeat the claim of the petitioner for disability pension. However, on account of delay, we decline the petitioner's prayer for the payment of interest."

The ***Apex Court has held in Union of India v. P.S. Bhargava***, 1997 LAB. I.C. 260 that there cannot be automatic forfeiture of pensionary benefits on voluntary resignation in case of an Army Officer who has to his credit minimum period of qualifying service. Their Lordships have held as under:

" Regulation 16 does not cover a case of voluntary resignation Regulation 16 (b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulation intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16 (b) would have been incorporated in the Regulations but this has not been done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntary

resign, cannot be automatically deprived of the terminal benefits."

In the present case, the petitioner had put in more than 15 years of service and will be entitled to disability pension after he had put in minimum qualifying service as per the Regulations.

The upshot of the above discussion is that the case of the petitioner is to be considered as if he had sought discharge on medical ground and not on compassionate grounds in view of the injury suffered by him in the year 1985. The petitioner is accordingly entitled to disability pension as well as to Army Group Insurance Disability Group.

Accordingly this writ petition is allowed. Annexure Annexures-1 and P-3 are quashed and set aside. The respondents are directed to grant the petitioner disability pension with effect from 1985 with interest @ 9%. He is also entitled to the benefits of AGI. There shall be no order as to costs.

(Rajiv Sharma), Judge

June 22, 2007
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